

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 27 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

ANGELA R.,	)	2 CA-JV 2011-0119
	)	DEPARTMENT B
	)	
Appellant,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
v.	)	Rule 28, Rules of Civil
	)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC	)	
SECURITY, ANGELINA R., and	)	
ANTONIO R.,	)	
	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD200900135

Honorable Joseph R. Georgini, Judge

AFFIRMED

Ritter Law Group, L.L.C.  
By Matthew Ritter

Florence  
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General  
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Tucson  
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ESPINOSA, Judge.

¶1 Angela R. appeals the juvenile court's October 2011 order terminating her parental rights to Angelina, born in May 2006, and Antonio, born in October 2007, on the grounds of chronic abuse of dangerous drugs and alcohol, and the length of time in court-ordered, out-of-home care for both nine-month and fifteen-month periods. *See* A.R.S. § 8-533(B)(3), (8)(a), (c). Angela challenges the sufficiency of the evidence to support the order, arguing ADES did not establish it had provided her with services that addressed her mental health issues and, therefore, did not diligently provide her with appropriate reunification services as required. We affirm for the reasons set forth below.

¶2 ADES filed a dependency petition in October 2009 alleging Antonio, Angelina, and Aaron, Angela's oldest son, had been taken into custody by Child Protective Services (CPS) after Angela was arrested and incarcerated for shoplifting and assault. After a hearing in May 2010 that Angela did not attend, the children were adjudicated dependent. The juvenile court determined ADES had proved the allegations of the dependency petition, specifically finding: the children had been removed from Angela's custody after she was arrested for shoplifting and assaulting a cashier; at that time there were outstanding warrants for Angela's arrest on other matters; Angela had a history of substance abuse involving marijuana, methamphetamine, and alcohol; she suffered from mental illness and when she did not take her medication, she became combative and violent, thereby placing the children at risk; she had exposed her children to domestic violence and had assaulted one of them with a belt in April 2009; and, she

had been neglecting her children. Because Angela would not consent to the placement of the children with a family member, they were placed in foster care. The court approved a case-plan goal of reunification.

¶3 In July 2011, ADES filed a motion to terminate Angela’s parental rights to Angelina and Antonio based on chronic substance abuse pursuant to § 8-533(B)(3), and for both nine-month and fifteen-month periods of court-ordered out-of-home care, pursuant to § 8-533(B)(8)(a) and (c). At the end of the termination hearing in late September, Angela argued ADES had failed to sustain its burden of proving the allegations of the motion because it had not provided services designed to address her mental-health issues, specifically her depression, and as a result, she did “not [stand] a chance of being successful with the case plan.” Ruling from the bench, the court rejected this argument and, after making extensive factual findings, concluded clear and convincing evidence supported the allegations of ADES’s motion, which it granted.

¶4 The court found, inter alia, that ADES had provided Angela “ample opportunities and services to remedy the circumstances that caused” the children to remain out of the home. The court observed that although the record suggested “there might be some mental-health issues,” it found the evidence did not establish such issues could be a basis for terminating Angela’s parental rights. “This is a drug-addiction case,” the court said. And addressing Angela directly, the court stated, “[Y]ou haven’t allowed yourself to get the treatment that you need . . . .” The court told Angela her substance abuse had “caused [her] to be involved in the Court system, . . . to commit crimes, . . . to

go to jail,” and resulted in the loss of her children. Consistent with the language in § 8-533(B)(3), the court found Angela’s substance abuse was chronic and there were “grounds to believe that the condition will continue for a prolonged, indeterminate period.” The court also found ADES had made “reasonable efforts to provide [Angela] with rehabilitative services,” including “substance-abuse treatment services,” which she did not complete. She continued to use drugs and alcohol, repeatedly testing positive for methamphetamine, most recently in July 2011. The court concluded Angela had not benefitted from the services ADES had provided and any further reunification efforts and services would be futile. The court added that if Angela did have a mental-health issue, she “c[ould]n’t stay clean” in order to address such an issue.

¶5 Addressing the termination based on both nine-month and fifteen-month periods of out-of-home placement under § 8-533(B)(8)(a) and (c), respectively, the court found ADES had made “diligent efforts” to provide Angela with appropriate services, listing the panoply of services ADES had provided. The court concluded Angela had “substantially neglected and willfully refused to remedy the circumstances” that caused the children to remain out of the home, and there was a “substantial likelihood” she would “not be capable of exercising proper and effective parental care and control in the near future.” Finally, the court found terminating Angela’s parental rights would be in the children’s best interests because it would free them for adoption by a family member with whom they had been living, giving them permanency in a “stable, drug-free, loving environment.” The court issued a brief minute entry order after the hearing but as

directed, ADES submitted a formal order, which contained many of the factual findings the court had made at the end of the hearing. The court signed and filed the order in October. Angela argues on appeal as she did below, that ADES did not provide appropriate reunification services because it did not provide services designed to address her mental-health issues, in particular, her depression.

¶6 A parent's rights may be terminated if the juvenile court finds the evidence is clear and convincing as to at least one statutory ground, *see* Ariz. R. P. Juv. Ct. 66(C); *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004), and that a preponderance of the evidence establishes terminating the parent's rights is in the child's best interests, *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). If there is reasonable evidence in the record supporting the factual findings upon which the order is based, we will affirm. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). Before a parent's rights may be terminated based on the length of time in court-ordered out-of-home care, the juvenile court must find clear and convincing evidence establishes ADES "has made a diligent effort to provide appropriate reunification services." § 8-533(B)(8); *see also* § 8-533(D) (providing when termination sought under § 8-533(B)(8), "court shall consider the availability of reunification services to the parent and the participation of the parent in these services"). Similarly, a parent's rights may be not terminated on the ground of chronic substance abuse unless ADES has provided appropriate services designed to address that parent's abuse of drugs or alcohol. *See Mary Lou C. v. Ariz. Dep't of Econ.*

*Sec.*, 207 Ariz. 43, ¶ 15, 83 P.3d 43, 49 (App. 2004). However, ADES is not required to provide services that would be futile. *Id.* And, it satisfies its obligation when it gives a parent the “time and opportunity to participate in programs designed to help [the parent] become an effective parent.” *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶7 As noted above, the court ruled ADES had made diligent efforts to provide Angela with appropriate services. The court specifically addressed Angela’s complaint that ADES had failed to assist her in addressing mental-health issues that she claimed made it impossible for her to succeed in complying with the case plan. As the court pointed out, it was not terminating Angela’s rights based on mental condition or illness. Therefore, ADES arguably was not required to provide services specifically addressing that issue. *See Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, ¶ 33, 971 P.2d 1046, 1053 (App. 1999) (requiring ADES to provide appropriate services addressing parent’s mental illness when termination sought on that ground). But in any event, even assuming as true that Angela had mental-health issues and that they overlapped with her chronic abuse of drugs and alcohol, the court’s factual findings and its order terminating Angela’s rights are amply supported by the record.

¶8 The court found and the record shows Angela’s primary issue was substance abuse. The court further found that Angela’s mental-health issues could not be addressed unless she addressed the substance abuse issue first, which she had failed to do. The record supports this finding. It shows ADES offered Angela a variety of services,

including parenting classes, supervised visitation with the children, and, relevant to this appeal, drug and alcohol treatment as well as mental-health services, providing her transportation to facilitate her participation in those services. Responding to Angela's complaint that she felt "depressed and unmotivated," the case manager tried to arrange psychiatric services, but Angela thwarted those efforts. ADES referred Angela to Terros Arizona Families F.I.R.S.T. for various services, including group therapy, but Angela simply did not show up for scheduled sessions.

¶9 ADES at least twice tried to arrange a psychiatric evaluation. Angela could not attend the first appointment in 2009. The next time, she arrived and tested positive for drugs and could not participate in the evaluation. She was not evaluated until just two weeks before the severance hearing. Case manager Bethany Kingston testified at that hearing that the individual who was scheduled to conduct the evaluation had "stated [Angela] had not been clean long enough" to be evaluated. Kingston explained, "you need to get the client off of the drugs before you can treat the mental-health issues," and "until [the client] get[s] clean . . . the [client's] mental health is kind of put on the back burner." She further explained that an evaluation could not produce accurate results if the person is under the influence of drugs. And, when asked whether her record from New Mexico's Child Protective Service's involvement with Angela showed mental-health treatment had been part of the case plan, she stated it did not.

¶10 ADES arranged substance-abuse treatment at least four different times and each time services were terminated because of Angela's failure to participate. The

caseworker repeatedly asked her to participate in a psychiatric evaluation and to follow up on any therapeutic recommendations, in addition to the drug and alcohol treatment, and domestic-violence and/or anger-management classes. The only service she completed was parenting classes. By June 2011, she rarely visited the children, failing to show up for scheduled visitation, even when it was in her own home, and as a consequence, ADES decreased her visits from twice weekly to once each week. When Angela was asked during the termination hearing why she had not completed drug and alcohol treatment, she admitted it was true that she had not and said, “I was just not motivated to do it. I was—between going to jail and being arrested and trying to go to group, I couldn’t keep up.” Explaining further, she testified, “nobody [in group] has as many warrants or as many legal issues as I do,” and she has “a hard time just living day-by-day,” guessing, “it’s my depression.” But she admitted she knew that she could not undergo a psychiatric examination because she had been unable to attain sobriety.

¶11 We do not reweigh the evidence on appeal, rather, we defer to the juvenile court with respect to any factual findings because, as the trier of fact, that court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d at 945. The juvenile court must decide, after exercising its discretion to determine witnesses’ credibility and weigh the evidence presented, whether the evidence establishes clearly and convincingly that at least one statutory ground for severing a parent’s rights exists. *Id.* And to the extent there were conflicts in the evidence in this regard, it was for the

juvenile court, not this court, to resolve. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 282.

¶12 The record shows that even assuming Angela suffered from some mental-health issues, ADES diligently attempted to provide her with reasonable services, beginning with treatment for her substance-abuse issue. But Angela failed to benefit from these services, making any exploration of and treatment for mental-health issues difficult, if not impossible. Reasonable evidence supports the court’s finding that it would be futile to provide additional services.

¶13 For the reasons stated, the court’s order terminating rights to Angelina and Antonio is affirmed.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge